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The Big City; Prison Mistake Shows Why Reform Lags

By JOHN TIERNEY

IF you discover that you've imprisoned the wrong man for two years, would you be remorseful? Would you discipline or fire the employees responsible for the mistake? Would you announce that you have taken steps to avoid imprisoning more innocent people?

If you would, you're not cut out for the New York State Department of Correctional Services. The officials there are not easily perturbed, as they have demonstrated in the case of Kerry Sanders, a homeless, mentally ill man from Los Angeles who was extradited and locked up at Green Haven prison in Stormville because he had the same last name and birthday as Robert Sanders, an escaped convict in New York.

In an account of the case in The New York Times Magazine last Sunday, Benjamin Weiser noted that, of the more than 20 people who testified in depositions or were interviewed about the case, only one -- a former deputy commissioner of the department -- had expressed shock at the mistake. This week's publicity did not shake the department's resolve.

James Flateau, the director of the office of public information for the corrections department, declined yesterday to discuss the mistaken imprisonment or any disciplinary actions against employees. "We're not really saying anything except what's contained in the court papers," he said.

Have any policies been changed to avoid a similar mistake? "I can't go any farther than the court papers," he said.

But do the court papers of this case contain any information about recent changes in policy? "That you'll have to go read," Mr. Flateau said.

Well then, could the office of public information provide a copy of the papers? "No," he said. "You can find them at the court."

The best source of information about the department turned out to be Benjamin Schonbrun, a lawyer in Los Angeles representing Mr. Sanders. He said that while the court papers contained no information about disciplinary actions or changes in policy, he had gotten some answers during depositions of officials at the department, including the commissioner, Glenn S. Gourd.

Mr. Schonbrun said he was told that no disciplinary action had been taken against anyone since the mistake was discovered five years ago. State workers repeatedly ignored Kerry Sanders's protestations that he was innocent and was not named Robert. They also ignored fingerprints, photographs and medical records.

Of the 25 state employees deposed, Mr. Schonbrun said, only one reported being disciplined for any reason, and that was not in connection with the case. "One corrections officer said he was formally disciplined for giving a prisoner a cup of coffee," Mr. Schonbrun said. "But for wrongly putting someone away for two years, you get nothing."

Mr. Schonbrun said he was told that the department had recently begun taking better photographs of convicts and training its officers to compare fingerprints. It's reassuring to hear that some reforms are under way, although it would be nice not to have to depend on a lawyer in California for news about our state policies.

STATE officials seem impervious to public opinion in this case. The attorney general's office unsuccessfully asked a judge to dismiss the case because Mr. Sanders did not meet the special legal requirements for lawsuits by prisoners. That's about as logical (and endearing) as killing your parents and asking for mercy because you're an orphan.

How can state officials afford to seem so callous? One answer is that prisoners have no political power. Another is that prison officials in New York do not live by the same rules as other workers. Correctional officers cannot be sued personally in state court for mistakes made on the job. Mr. Sanders has had to go to federal court to sue them, and even there, public employees enjoy a special immunity.

"Public officials have what's called a qualified immunity defense," said John Boston, director of the Prisoners' Rights Project of the Legal Aid Society of New York City. "Proving that they were negligent isn't enough; they had to have actual knowledge of something wrong. So even if it can be shown that the policy for identifying prisoners was inadequate, it's entirely possible that state officials would not be held liable for locking up the wrong person."

Whatever becomes of this case, it already illustrates why prison reform is so difficult in New York. Elsewhere, though, the situation is less bleak. More on that next week.